



**European Securities and Markets Authority**

103 rue de Grenelle

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**Consultation Paper - On the evaluation of certain elements of the Short Selling Regulation**

*1 September 2017*

Response of:

**EUROPEAN INVESTORS' ASSOCIATION IVZW**

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## **Introduction**

The European Investors' Association – European Investors – is a not-for-profit and member-based organisation that aims to strengthen the representation of investors in Europe. European Investors represents investors in regulatory discussions, engages on behalf of (long-term) investors with listed companies, and initiates class actions to reclaim losses incurred by investors as a result of unlawful behaviour. All in all, European Investors' objective is to enhance trust in European capital markets by promoting transparency, engagement and accountability.

## **General comments**

Short selling plays an important role in financial markets. It increases market liquidity, contributes to efficient price discovery (particularly, it helps to prevent over-pricing), and facilitates hedging. However, short selling can also be used in an abusive manner and contribute to disorderly markets. Transparency of short selling is in view of European Investors the preferred way (rather than measures restricting short selling) to mitigate the risks associated with it. Transparency also ensures that information on net short positions can be used by investors to inform their investment decisions.

European Investors will focus, in responding to the ESMA Consultation Paper, on those questions that deal with (i) ban on (uncovered) short selling and (ii) transparency of net short positions and reporting requirements (Section 4, Q12-Q18).

### **3. Short term restrictions on short selling in case of a significant decline in prices: Article 23 of the SSR**

**Q10: What are your views on the proposal to change the procedure to adopt short term bans under Article 23 of the SSR? Please elaborate.**

Empirical evidence nor event study show that the SSR temporary short selling restrictions have a statistically significant impact on stock price returns. The fact that only two National Competent Authorities have used a temporary ban on short selling, does not have such a significant influence on the outcome that these research results should be ignored. Thus, the effectiveness of bans under Article 23 of the SSR is without any evidence. In this light European Investors doubts the effectiveness of the procedure as such, as well as the proposed change thereto. European Investors may well understand a possible temporary ban on uncovered short selling while uncovered short selling might have a detrimental impact on the functioning of capital markets. However, this does not apply on (covered) short selling. Short selling is an accepted instrument used by market participants to act in certain market conditions.

If ESMA considers, as mentioned in paragraph 136 of the consultation document, not only to change the procedure but even to eliminate the power for competent authorities to activate the type of short-term bans, European Investors would support the latter.

**Q11: What are your views on the proposal to change the scope of short term bans under Article 23 of the SSR? Please elaborate.**

If ESMA decides to hold on to a temporary ban on short selling, European Investors believes that the change of scope is reasonable. As mentioned before, the empirical evidence and event studies show that due to the possibility of circumvention, short term bans are ineffective overall. It's European Investors' opinion that the scope change should be restricted to a ban on uncovered short selling, both in shares as in derivatives. Uncovered short selling is in our opinion more damaging and poses a higher risk for other market participants than ordinary short selling.

#### **4. Transparency of net short positions and reporting requirements**

**Q12: Do you see any reasons to change the current levels of the thresholds regarding the notification to competent authorities and the public disclosure of significant net short positions in shares? Please elaborate.**

No, we do not see any reasons to change the current levels of the thresholds.

We still think the two-tier model, distinguishing between 'private' and 'public' disclosures, and the selected thresholds for both types of disclosures (i.e. the lower thresholds of 0.2%, 0.3% and 0.4% for disclosures to national competent authorities and the higher ones of 0.5%, 0.6%, 0.7% and so on for disclosures to the market) are appropriate.

**Q13: Do you see benefits in the introduction of a new requirement to publish anonymised aggregated net short positions by issuer on a regular basis? Can you provide a quantification of the benefit of such new requirement to your activity? Please elaborate.**

Yes, European Investors would support a requirement for competent authorities to publish anonymised aggregated data by issuer on a regular basis, preferably daily (e.g. directly after 17.30 - COB - on the following trading day).

Such aggregated data provides investors with an early signal that there may be material grounds for considering individual securities to be over-valued. Actually, anonymised aggregated data by issuer, which also includes net short positions below 0,5%, has more informative value to investors than non-anonymised data on individual net short positions above 0,5%. Moreover, since it is anonymised, disclosure of such data does not do any harm to investors that hold net short positions below 0,5%.

It would of course have some cost implications for competent authorities, but as far as we can judge, these additional costs would be limited (it is a matter of aggregating updated net short positions/adding or subtracting alterations). One could potentially automate the whole process .

**Q14: Do you agree that the notification time should be kept at no later than 15:30 on the following trading day? If not, please explain.**

Yes, the notification time should be kept at no later than 15.30 on the following trading day. European Investors believes this deadline strikes a right balance between the need to allow investors sufficient time to calculate their net short positions (relevant time being midnight) and the need to ensure competent authorities possess up-to-date information on relevant changes in net short positions and can publish this information, if required, to the market in a timely fashion.

**Q15: Do you agree that the publication time should be changed at no later than 17:30 on the following trading day? Please elaborate.**

Yes, we think it is sensible to allow competent authorities time to perform basic checks as to avoid disclosure of erroneous information to the market.

Moreover, competent authorities can use these extra two hours for compiling the anonymised aggregated data on net short positions by issuer (see our answer to Q14).

**Q16: What are your views on a centralised notification and publication system at Union level? Can you provide a quantification of the benefit of such centralised notification to your activity? What are your views on levying a fee on position holders to have access to and re of SSRport through such a centralised system? Please elaborate.**

European Investors definitely sees the benefits of a centralised notification and publication system at Union level i.e. reduction of the burden for investors that have net short positions in multiple Member States.

Yet, direct supervision on the maintenance of orderly financial markets and market abuse is within the competence of national competent authorities, not of ESMA. Therefore, European Investors doubts whether it is sensible and appropriate (at least not for now), to take notification and publication of net short positions away from the national competent authorities.

A hybrid option could be considered, whereby the front end of the notification process is centralised, while its back end as well as the publication of net short positions is still decentralised, i.e. position holders would only need to login to one single system (under the auspices of ESMA) to make notifications. Notifications are then immediately and automatically, without manual interference from ESMA, forwarded to the competent national authority. The competent national

authority processes the notifications and, if required, discloses the updated net short positions to the market.

**Q17: Which other amendments, if any, would you suggest to make the notification less burdensome?**

When calculating their net short positions, investors are expected to include in the calculation of their net short positions the short positions they hold in shares indirectly, through short positions in stock market indices and exchange traded funds (ETFs).

This is a rather burdensome task. Moreover, short positions in stock market indices or ETFs are usually held for hedging purposes, not to express a negative sentiment with respect to individual shares within the index or ETF.

We therefore would suggest to adopt a more proportionate approach. For instance, an index or ETF can be excluded from the calculation, unless the individual share represents more than 20% of the index or ETF, or the investor, via his holding in the index, holds more than 1% of the individual share.

**Q18: Do you agree that the identification code of the position holder should be the LEI and that such code should be mandatory for legal entities? Please elaborate.**

Yes, for the reasons mentioned by ESMA on page 45 of the Consultation Paper. Moreover, the Legal Entity Identifier is already required or recommended under a number of EU Regulations and Directives (e.g. the European Markets Infrastructure Regulation, Markets in Financial Instruments Directive II, the Market Abuse Regulation and the Transparency Directive).

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